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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

9601

FILE: B-193369

DATE: April 2, 1979

MATTER OF: Roger J. Au & Son, Inc.

DLB 01360

## DIGEST:

1. Where amendment to IFB specifically called attention to Corps of Engineers hired labor estimate, allegation that Corps failed to disclose that dredging work was subject to Industry Capability Program is without merit.
2. Where record shows Corps of Engineers has thoroughly considered protester's objections to hired labor estimate and protester has failed to clearly demonstrate estimate is erroneous, protest concerning Corps' cancellation of IFB and conducting dredging work in-house under Industry Capability Program is denied. ←

Roger J. Au & Son, Inc. (Au), protests the cancellation of invitation for bids (IFB) No. DACW49-78-B-0026, issued by the Buffalo District, Army Corps of Engineers, under which the Corps had sought bids for maintenance dredging in the Buffalo, New York, River and Harbor.

This procurement involves the Corps' Industry Capability Program (33 C.F.R. § 209.147 (1978)) which provides for competition between Corps dredges and commercial dredges. Under the program, where a Corps dredge is available and capable of performing the advertised work, it is used as the basis for computing a "hired labor" estimate, which represents the cost of doing the work with the Corps dredge. This estimate is used to evaluate the price reasonableness of industry bids received. If the low industry bid is within 25 percent of the hired labor estimate and is otherwise acceptable, award is made to that bidder. If the low industry bid is more than 25 percent

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in excess of the estimate, 33 U.S.C. § 624 (1976) prohibits appropriated funds from being used to pay for the work. Engineer Regulation 1180-1-1, 1-372(g) (Change 32, January 6, 1976), provides that in such circumstances the contracting officer will reject all bids and either readvertise the work or recommend to Corps Headquarters that the work be performed by Government plant and hired labor.

In the present case, the hired labor estimate was \$762,720, Au's low bid was \$1,150,000 (50.78 percent higher than the estimate), and the bid of Great Lakes Dredge & Dock Company was \$1,579,750. *PL 601362*  
Au protested to the Corps that the hired labor estimate was unreasonably low. After the estimate was reviewed at the District, Division, and Headquarters levels, the Corps denied Au's protest, canceled the IFB and proceeded to perform the work. Au then protested to our Office.

Initially, Au protests that the IFB did not reveal that the procurement was part of the Industry Capability Program. However, as the Corps points out, amendment 0001 to the IFB, dated July 3, 1978, provided in part:

"The Corps of Engineers Hired Labor Estimate for this work will be based on the Corps of Engineers owned seagoing dredge HOFFMAN \* \* \*. Attendant Corps of Engineers costs, including surveys, supervision, inspection, and overhead, will be added to each bid and the Government estimate as shown below for the purpose of determining reasonable cost pursuant to 33 USC 624."

Au had also been notified by a letter from the Corps dated February 28, 1978, that the Buffalo Harbor project would be advertised under the Industry Capability Program. We agree with the Corps that this aspect of the protest is without merit.


The protester next challenges the reasonableness of the Corps' hired labor estimate. Au alleges that such estimates can be manipulated to "force out private competition," and questions several specific aspects of the estimate in the present case (estimated cubic yards per load, noneffective time, overhead on special costs, and depreciation).

The record shows that all of these specific objections were thoroughly considered by the agency after bids were opened and in July 1978 when Au protested to the Corps. In this regard, the burden is on the protester to clearly show that the Government's hired labor estimate is erroneous, and the fact that all bids submitted are higher than the estimate is not sufficient to constitute such a showing. Durocher Dock & Dredge, Inc., B-189704, March 29, 1978, 78-1 CPD 241, affirmed, B-189704, August 7, 1978, 78-2 CPD 92. Rather than presenting information which clearly shows the estimate is erroneous, Au is in large measure either substituting its opinion for the Corps' in certain judgmental areas which the Corps is in the best position to evaluate (e.g., the estimated cubic yards per load under prevailing conditions in the Buffalo River and Harbor) or calling for an investigation of background data (e.g., depreciation on the HOFFMAN) to explore the possibility that if additional information were developed it might show the estimate is too low.

We recognize that the hired labor estimate is critically important to the Industry Capability Program and in the past have expressed the view that the Corps' performance in preparing such estimates should be improved. OKC Dredging, Inc., B-189507, January 18, 1978, 78-1 CPD 44. However, our review basically involves considering whether the Corps has presented information providing rational support for the estimate and whether, contrariwise, the protester has overcome such information by demonstrating that the estimate is erroneous; the fact that further investigation might reveal undisclosed errors in the estimate

is not a sufficient basis for us to object to the agency's position. OKC Dredging, Inc., supra. Based on the record in the present case, we see no basis for objection to the Corps' decision to cancel the IFB and proceed with the work using the HOFFMAN.

The protest is denied.

  
Deputy Comptroller General  
of the United States